IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1575 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARAT KANTILAL TRIVEDI

Versus

DHOLKA NAGARPALIKA

Appearance:

Mr. Sunil Mehta, for Mr.S.K. Bukhari
for Petitioner.
MR RA PATEL for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/04/2002

ORAL JUDGEMENT

The petitioner, in this petition under Article 226 of the Constitution of India, has challenged the order passed by the respondent Municipality on 13th March, 1991 directing the petitioner to work as Daily Wager in Octroi Department from 12.3.1991 pursuant to the Resolution No. 134 passed by the respondent Nagarpalika in its General Meeting held on 12.3.1991. The petitioner has further prayed for a direction to be issued against

the respondent Municipality to pay full backwages to the petitioner from 1st July 1983 to 14th August 1986, with full consequential benefits and 12% interest thereon. The petitioner has also prayed for an interim relief against the implementation and execution of the order passed by the respondent-Municipality on 13th March 1991.

2. This Court has initially passed the order of status-quo on 18.3.1991, and thereafter on 3.4.1991 the following order was passed by this Court :

> "Rule. Having heard the learned Advocates of parties we grant interim relief staying operation of the impugned order at Annexure 'C'. As a result, the respondent is directed to permit the petitioner to resume his duties as permanent Octroi Naka Clerk which order was passed in his favour as per Annexure 'B'. D.S.P."

3. The brief facts, giving rise to the present petition, are that the petitioner was serving in the Octroi Department as Octroi Clerk since 1981. The petitioner was thereafter relieved by the respondent-Municipality on 30th June 1983 and as a result thereof a reference was made to the Labour Court being ReferenceNo. BCA No. 2040/1983. The Labour Court passed an order on 5th May 1986, directing the respondent Municipality to reinstate the petitioner on his original post with continuity of service and with full backwages, from 1-7-1983.

4. Pursuant to the aforesaid order passed by the Labour Court, the Chief Officer of the respondent Municipality issued an order on 14th August 1986 appointing the petitioner as Octroi Naka Clerk. It was made clear in the said order that the petitioner's appointment was permanent and it was subject to the rules and regulations framed by the State Government. The petitioner had, therefore, joined his duty as Octroi Naka Clerk with effect from 14.8.1986.

5. The petitioner has further submitted in the petition that all of a sudden on 13th March 1991 the petitioner received letter from the Chief Officer of the respondent Municipality whereby the service condition of the petitioner was changed and the petitioner was asked to work as a Daily Wager in Octroi Department with effect from the said date. The petitioner has further submitted that the said order passed on 13th March 1991 was nothing but the termination of his services by the respondent

Municipality, without following any due procedure of law and without issuing any notice whatsoever.

6. The petitioner has also made a grievance in the petition that though the Labour Court has passed the award on 5.5.1986 directing the respondent Municipality to reinstate the petitioner to his original post with continuity of service and to pay him full backwages from 1.7.83 till the date of reinstatement, the backwages and other benefits were not given to the petitioner till the date of filing of the present petition before this Court.

7. The respondent Municipality has filed its affidavit-in-reply wherein prayers made in the petition were opposed by the respondent Municipality. The respondent Municipality has taken the plea in its affidavit-in-reply that the order dated 14.8.1986 was passed by the Chief Officer as per the instructions of the President of the Municipality, whereas under Rule 49 of the Municipalities Rules, the powers to appoint, discharge or dismiss any municipal servant are vested with the Municipality itself and the same cannot be delegated to any of the Committee or Office Bearer and therefore the said order was revised by the respondent Municipality by its Resolution No. 134 dated 12.3.1991. The respondent-Municipality has further submitted that even if the petitioner wanted to challenge the aforesaid resolution, the same could have been challenged under Section 258 of the Gujarat Municipalities Act, before the Collector and since the petitioner has not exhausted the alternative remedy available to him, this Court should not have exercised its writ jurisdiction under Article 226 of the Constitution of India.

8. The petitioner has also filed his affidavit-in-rejoinder denying the averments made by the respondent-Municipality in its affidavit-in-reply. The petitioner has also submitted in its affidavit-in-rejoinder that in view of the award passed by the Labour Court, the petitioner was entitled to have continuous service with full backwages and that the respondent-Municipality has no power or authority or jurisdiction to cancel the order passed on 14.8.1986 pursuant to the directions issued by the Labour Court. The petitioner, therefore, submitted that the order passed by the respondent-Municipality on 12.3.1991 was absolutely illegal, bad, without jurisdiction and in violation of the award passed by the Labour Court. The petitioner has further relied on the order passed by this Court in Civil Application No. 350 of 1988 moved by one of the employees of the respondent-Municipality, namely

Shri Umesh Amin in Special Civil Application No. 1974 of 1985. The said Shri Umesh Amin had prayed for a direction against the respondent-Municipality for payment of salary as per the pay-scale of the regularly employed persons and the said petition was admitted, and while disposing of the abovereferred petition, this Court has directed the respondent-Municipality to make payment of salary to the said Shri Umesh Amin as per the salary of regularly employed persons.

9. I have heard learned advocate, Mr. Sunil Mehta appearing for learned advocate, Mr. S.K. Bukhari for the petitioner. Though Mr. R.A. Patel, the learned advocate has filed his appearance on behalf of the respondent-Municipality, he was not present before this Court even on second call. I have gone through the pleadings made by the petitioner in this petition as well as the affidavit-in-rejoinder and also the pleadings of the respondent made in this affidavit-in-reply. I am of the view that the respondent-Municipality is not justified in passing the order on 13.3.1991 whereby the service conditions of the petitioner was changed and he was directed to work as Daily Wager in Octroi Department. This action of the respondent Municipality was contrary to the directions issued by the Labour Court in Reference (BCA) No. 2040 of 1983 while passing the order on 5-5-1986. The Labour Court has, in terms, directed the respondent Municipality to reinstate the concerned workman, i.e., the petitioner on his original-post with continuity of service and to pay him full backwages from 1-7-1983 till the date of reinstatement. In Part compliance of its order, the respondent Municipality has reinstated the petitioner on 14.8.1986. However, his full backwages were not paid to the petitioner for the period from 1.7.1983 to 14.8.1986. It is true that the petitioner has not challenged this action of non-payment of backwages for the above period prior to the filing of this petition which was filed on 14.3.1991. Normally, the Courts are reluctant to entertain any prayer which is made after the expiry of the period of about 5 years. Simply because the petitioner has challenged the order passed by the respondent-Municipality on 13.3.1991 in the present petition, it does not give him any entitlement to challenge the action of the respondent-Municipality, the cause of which action arose in the distant past. I am, however, of the view that since the Labour Court has directed to give full backwages from 1.7.1983 to 14.8.1986, the date on which he was reinstated, the petitioner was entitled to the said amount from the respondent-Municipality and since it was not given to the petitioner, he has every right to raise the said

grievance in this petition.

10. In view of the above facts and circumstances of the case, I hereby quash and set aside the order passed by the respondent-Municipality on 13th March 1991, and direct the respondent-Municipality to treat the petitioner as a permanent employee of the respondent-Municipality. I further direct the respondent Municipality to pay the backwages to the petitioner for the period from 1.7.1983 to 14.8.1986, as directed by the Labour Court, if the amount is so far not paid to the petitioner. However, as the petitioner has raised the said grievance much after a period of five years, no interest would be awarded to the petitioner on the said amount. This petition is, therefore, allowed and Rule made absolute to the above extent. There will be no order as to costs.

rmr. [K.A. Puj, J.]